

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 31, 2017

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the February 24, 2017 meeting will be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

B. **Variance Appeals**

1. **PLN-BOA-17-00013: JAKE RIORDAN** – requests variances to: 1) increase the maximum front setback from 20 feet to 90 feet for Lot 1, and 2) increase the maximum front setback from 20 feet to 145 feet from the private access easement for Lot 2 in a Neighborhood Business (B-1) zone, at 4235 Harrodsburg Rd. (Council District 10).

The Staff Recommends: **Postponement**, for the following reasons:

- a. The orientation and architectural details of the buildings in the B-1 portion of the lot have not been finalized; therefore, the variance request is premature.
- b. The lots have not yet been created via a final record plat, and the Final Development Plan for the site was recommended for postponement. Until further action has been made by the Planning Commission, this appeal should not be acted on by the Board.

2. **PLN-BOA-17-00017: KENNETH BERRY** – requests variances to (1) reduce the required front yard from 20 feet to 15 feet for a porch enclosure; (2) increase the allowable projection of a deck from 8 feet to 12 feet; and (3) reduce the minimum front yard setback for the deck from 10' to 3' in a High Density Apartment (R-4) zone, within the defined Infill and Redevelopment Area, at 193 Old Georgetown Street (Council District 2).

The Staff Recommends: **Approval** of (1) a front yard setback reduction for the residence from 20' to 15' and (2) a reduction in the front yard setback for the deck from 10' to 7', for the following reasons:

- a. Granting the variances will not adversely affect the public health, safety, or welfare.
- b. The newly enclosed area was originally a covered porch, so the change does not have a significant impact on the site and provides additional interior space for the occupant of the home.
- c. The site is located within the Infill and Redevelopment area, which generally has more flexibility regarding setbacks; and the variances will not adversely affect the character of the general vicinity.
- d. Allowing the deck to remain at a depth of 8' would result in green space being preserved in the front yard and an improvement more in scale with the residence and surrounding properties. Bringing the deck closer to compliance by 4 feet will not deprive the applicant of a reasonable use of the land or prevent the applicant from using and enjoying the space.

This recommendation of approval is made subject to the following conditions:

1. The applicant shall obtain a building permit from the Division of Building Inspection within 30 days of Board action.
2. The applicant shall remove a portion of the constructed deck to reduce its projection into the front yard from 12 feet to 8 feet.

C. **Conditional Use Appeals**

*Note – This case is a postponement from the January 27, 2017 hearing.

1. **PLN-BOA-16-00037: KROGER COMPANY** – requests a conditional use permit to construct a new parking lot and driveways in a Neighborhood Business (B-1) zone, at 445 South Ashland Avenue (Council District 3).

Based on a recently submitted amended site plan (dated 1-22-17: 36 Total Parking Spaces) that reasonably addresses staff concerns regarding impacts to the South Ashland streetscape and pedestrian/biker access, the following revised findings and conditions for approval are recommended:

Findings:

- a. A new parking lot at this location should not adversely impact the subject or surrounding properties. The parking lot will include a direct access from the main Kroger store to South Ashland Avenue, which is considered as a much needed improvement for traffic management purposes. Additional parking will alleviate crowded conditions in the existing surface parking lot, and biker/pedestrian access will be facilitated by the provision of a 5' wide internal sidewalk adjacent to the parking.
- b. All necessary public services and facilities are available and adequate for the proposed use.

Conditions:

1. The parking lot and access shall be constructed in accordance with the revised site plan (dated 1-22-17: 36 Total Parking Spaces), or as amended to address requirements of the Divisions of Engineering, Traffic Engineering and Building Inspection.
2. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to construction and prior to opening the parking lot and access.
3. The final design of the parking lot, including the layout of parking spaces, access to South Ashland and overall circulation, shall be subject to review and approval by the Division of Traffic Engineering.
4. The front of the lot (along South Ashland) shall be landscaped in accordance with the requirements of Article 18-3(a)(2)2 of the Zoning Ordinance. In order to maintain sight triangles for traffic visibility, per Article 3-3 of the Zoning Ordinance, it may be necessary to provide only ground cover in some of the landscaped area where a 3' tall continuous planting would otherwise be required. A minimum of three trees shall be provided along the 100' of frontage, with planting location and species selected to minimize the potential for sight triangle obstruction.
5. Landscape buffers bordering the 5' wide sidewalk shall be planted with Liriope muscari (a low-growing plant in the Lily family, commonly known as spider grass), or another similar low maintenance ground cover, with spacing as customarily recommended for the plant chosen.
6. A speed hump shall be placed in the traffic aisle at the southwest corner of the property, at the property line where the zoning changes from B-1 to B-6P.
7. A stop sign shall be placed at the easterly end of the southern traffic aisle, to ensure that vehicles stop before crossing the sidewalk to get onto South Ashland Avenue.

*Note – This case is a postponement from the February 24, 2017 hearing.

2. **PLN-BOA-17-00007: TOTAL GRACE CHURCH** – requests a conditional use permit to expand the existing church and parking in a Planned Neighborhood Residential (R-3) and a Single Family Residential (R-1C) zone, at 1217, 1313 & 1317 N. Limestone and 100 Withers Ave. (Council District 1).

The Staff Recommends: **Postponement**, for the following reasons:

- a. Additional time is needed for the applicant to consider a modified proposal that reduces the extent of paving proposed in the front yards of 1217 and 1317 North Limestone and 100 Withers Avenue, with the goal of maintaining a comparable amount of open space as that provided on the adjoining residential properties.
 - b. There are significant questions related to the overall design of the parking areas that are proposed, which should be discussed with the Division of Traffic Engineering prior to the Board's consideration of the conditional use request.
 - c. The provisions of landscape buffers for the proposed parking lot, whether required by the Zoning Ordinance or otherwise deemed desirable, should be addressed by the appellant. Given the dimensions of the lots where parking is proposed, such buffers may ultimately determine the feasibility and design options for expanding the off-street parking areas for this church facility.
3. **PLN-BOA-17-00011: COMMUNITY MONTESSORI SCHOOL** – requests a conditional use permit to amend a previously approved conditional use (modifying the existing building and using an existing house located on the property as classrooms) in a Single Family Residential (R-1B) zone at 727 Stone Road (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit for use of an existing building should not adversely affect the subject or surrounding properties, nor should it disturb the adjoining property owners. Parking is on site and adequate for the use.
- b. A modest expansion of the approved existing school facilities and building envelope line, to include the existing building, will have little impact on the intensity of use on the property and will make use of a currently vacant structure.
- c. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The school shall be expanded in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection,

- including a Certificate of Occupancy, prior to opening the expanded facility.
3. The layout of the parking areas shall be reviewed and approved by the Division of Traffic Engineering.
 4. The school shall take whatever appropriate steps are necessary, above and beyond any required improvements to Stone Road, to ensure that stacking of vehicles on Stone Road does not take place. This may include working with parents to alter drop-off and pick-up routes and times.
 5. The off-street parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
 6. Any outdoor pole lighting shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby residential properties.
 7. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
 8. The 25' floodplain buffer (on both sides of the floodplain) shall be maintained as a conservation easement, with preferred vegetation to consist of short-growing native grasses and wildflowers. Allowable activities within this easement shall be guided by a Vegetation Management Plan developed through consultation with the storm water section of the Division of Engineering. This plan shall be adopted, and implementation initiated, within 6 months after occupancy of the school.
 9. Should it ever be constructed, access to the special events parking area at the end of Ark Royal Way shall be gated, with the gate to be open only during special school-related events. The gate shall remain closed during routine, daily school activities, and after the completion of any special events. The school shall take whatever steps are necessary to ensure that the end of Ark Royal Way is not used as a drop-off or pick-up area for students.
4. **PLN-BOA-17-00012: DARBY DAN FARM** – requests a conditional use permit to establish a farm gift shop in the Agricultural Rural (A-R) zone, at 3225 Old Frankfort Pike (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use will not compromise the area surrounding Darby Dan Farm. The primary client base for the gift shop will be guests who are on the property for a tour of the equine facility, and the purpose of the gift shop is to enhance their experience of the farm. Memorabilia of the farm operation have been offered on the internet for several years; this is only an on-site continuation of what has been remotely offered by Darby Dan Farm in the past.
- b. The scale of the use, both in the size of the building and the operation of the gift shop, is minimal compared to the overall size and general operation of the farm. There will be no signage advertising the gift shop, other than interior to the property; no additional facilities or services are needed for its operation; it will be located in an existing building, adjacent to the already provided guest parking area; and traffic other than what will be associated with scheduled farm tours will be minimal and possibly non-existent.
- c. A small farm gift shop, such as the one proposed, providing memorabilia specific to Darby Dan Farm, is an excellent example of what the recently adopted text amendment was designed to accomplish regarding agritourism in Fayette County.

This recommendation of approval is made subject to the following conditions:

1. That the gift shop be located and operated in compliance with the submitted application and site plan.
 2. That only farm or industry memorabilia or items related to Darby Dan Farm and its racing history be provided for sale on the property.
 3. That there be no signage, other than directional or identification signage interior to the property, advertising the farm gift shop.
5. **PLN-BOA-17-00014: POLO 1 LLC**. – requests a conditional use permit to construct and operate an assisted living facility in the EAR-3 portion of a property that is split-zoned Expansion Area Residential (EAR-3)/Agricultural Rural (A-R), at 2575 Polo Club Boulevard (Council District 12).

The Staff Recommends: **Approval**, for the following reason:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Immediately bordering property on two sides is currently undeveloped, and a high density residential use is on a third side. Properties directly across Polo Club Boulevard are commercial in nature, as are the properties across Man o' War Boulevard. With the recommended landscape buffer and plantings, the specialized residential facility that is proposed should be compatible with whatever use is developed on the immediately adjoining properties, which, once the property is subdivided, will also be zoned EAR-3. Assisted living facilities do not generate high levels of traffic, and the activities at such a facility are not inherently noisy or otherwise disturbing.
- b. All necessary public facilities and services are or will be available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The assisted living facility shall be constructed in accordance with the submitted application, and possibly a revised site plan, as amended to be consistent with a Final Development Plan approved by the Planning

Commission.

2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, Traffic Engineering and Building Inspection prior to construction and prior to occupying the facility.
 3. The parking lots shall be paved, with spaces delineated, and landscaped in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
 4. The final design of the access points, traffic aisles and layout of the parking spaces shall be subject to review and approval by the Division of Traffic Engineering.
 5. Any outdoor pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.
 6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
 7. A 15' wide landscape buffer shall be provided around the full perimeter of the subject property, to include (on average) one tree for every 40' of linear boundary, recognizing that trees may be staggered rather than formally aligned; and pockets of shrubbery and smaller trees, rather than a continuous hedge. The design of the landscape buffer will be subject to the approval of the Urban County Landscape Examiner with the Division of Building Inspection.
 8. Action of the Board shall be noted on the Final Development Plan for the subject property and on the final subdivision plat of the property.
6. **PLN-BOA-17-00015: SOUTHERN OAK LLC.** – requests a conditional use permit for a drive-through window in a Downtown Frame Business (B-2A) zone, at 473 East Main Street (Council District 3).

The Staff Recommends: **Disapproval**, for the following reasons:

- a. Granting the requested conditional use permit for a drive-through facility will adversely affect the subject property and surrounding properties because it will exacerbate an already less than desirable traffic situation on this portion of East Main Street, as well as in the property's parking lot. Turning left out of the parking lot is very difficult due to the traffic situation and lack of a turn lane, and could result in traffic backing up on the site as well as treacherous conditions for drivers, pedestrians, and cyclists along this portion of East Main Street.
 - b. A coffee shop with a drive-through is anticipated to result in nearly five times as many morning trips, and nearly four times as many total trips per day as a bank with a drive-through. As such, adverse impacts associated with this proposed use are reasonably expected to be much greater than the previously approved bank facility.
 - c. The elevated noise associated with a coffee shop drive-through facility including frequent use of speakers, cars idling, and car radios, is not appropriate, given the adjacent property's use as a funeral home.
7. **PLN-BOA-17-00016: IMMANUEL BAPTIST CHURCH** – requests an amended conditional use permit to expand the parking, and variances to: 1) reduce the minimum front yard setback from 30 feet to 23 feet at 3009 and 3013 Tates Creek Road; and 2) reduce the minimum setback from 40 feet to 18 feet at 3100 Tates Creek Road, in a Single Family Residential (R-1B & R-1C) zones, at 3100, 3009 & 3013 Tates Creek Road (Council District 5).

The Staff Recommends: **Approval** of the conditional use to expand parking and the variance to reduce the minimum setback from 40 feet to 18 feet at 3100 Tates Creek Road. for the following reasons:

- a. Granting the requested amended conditional use permit to expand the parking lot should not adversely affect the subject or surrounding properties, provided that storm water management requirements are met.
- b. The need for the requested variance arises from a special circumstance existing on this site, which is the slanted configuration of the current parking lot, and is not the result of actions of the applicant taken without regard to zoning regulations.
- c. The requested variance will not alter the character of the general vicinity, as it creates a situation that is similar to the parking lot on the neighboring property.

This recommendation of approval is made subject to the following conditions:

1. The new parking areas shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
3. An updated storm water management plan shall be implemented as part of the parking lot expansion. This plan, subject to acceptance by the Division of Engineering, shall address existing drainage problems in the immediate area, as required by the adopted Engineering Manuals.
4. Any outdoor play area (in association with a child care use), of at least 25 square feet per child, shall be fenced and screened as required by the Zoning Ordinance.
5. All parking areas shall be landscaped in accordance with the provisions of Article 18.

The Staff Recommends: **Disapproval** of the conditional use to expand parking and the variance to reduce the minimum setback from 30 feet to 23 feet at 3009 and 3013 Tates Creek Road. for the following reasons:

1. These properties are located across a very busy street from the main church campus. Providing parking on

these properties will likely result in hazardous conditions for both pedestrians utilizing this parking lot, as well as drivers along Bates Creek Road.

2. There is no guarantee that use of shuttle buses and police assistance will be 100% effective in minimizing risks to pedestrians. Given the excess of parking already provided, which will be increased on the church property, this proposed parking should be viewed as an unacceptable alternative.

D. **Administrative Reviews**

1. **PLN-BOA-17-00018: LISA N. GANNOE** – an administrative appeal to determine that the Division of Planning erred in not recommending a revocation hearing for a conditional use approved by the Board on May 26, 2006 in the Agricultural Rural (A-R) zone at 7524 Old Richmond Road (Council District 12).

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be April 28, 2017.

VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.